

INITIAL APPEARANCE ON A COMPLAINT

*[Use this form **only** if the defendant has not appeared previously in federal court in this district on this/these charge(s) and is charged by complaint.]*

[Note: *If you have any doubts about the defendant's ability to speak and understand English, then consider using a certified interpreter in accordance with 18 U.S.C. § 1827. **If a certified interpreter is used, then no record needs to be made about the interpreter's qualifications.** Be sure to swear the interpreter.]*

1. "This is the case of the United States of America versus (*name of defendant*). You are (*defendant's name*)? I am (*state your name*)."
2. *[Tell the defendant]* "You've been charged in a complaint with

[Here are some examples.]
 - (a) conspiracy to manufacture/distribute (*name of drug*)."
 - (b) possession of (*name of drug*) with the intent to distribute."
 - (c) unlawfully reentering the United States after you were deported."
 - (d) possession of a firearm after having been convicted of a felony."
 - (e) possession of a firearm while being an unlawful user of drugs."
 - (f) possession of a firearm after having been convicted of a domestic abuse charge."

"I understand this is your first appearance in federal court in this district on this/these charge(s)." *[Ask the prosecutor]* "Is that correct?"
3. *[Ask the defendant]* "Do you have a copy of the complaint?" *[If not, make sure a copy of the complaint is provided to the defendant.]* "I now will advise you of certain of your constitutional rights."
4. "You have the right to remain silent. This means you don't have to say anything to anyone. If you give up that right and make a statement, the prosecutor can, and probably will, use everything you say against you."

Therefore, I strongly suggest that you not say anything to anyone unless you and your lawyer decide it's in your best interests to do so. If you've already given a statement, you don't have to say anything further. If at any time you decide to go ahead and make a statement, you have the right to stop at any time."

5. "Do you understand your right to remain silent?"
6. "You also have the right to be represented by a lawyer at every stage of these proceedings. If you need some time to find a lawyer, I'll give you that time. If you want a lawyer but don't have the money to hire one, I'll appoint one to represent you. If I appoint a lawyer to represent you, the court would pay the lawyer's fees and expenses, but the lawyer would represent only you and your interests in the case."
7. "Do you understand your right to have a lawyer represent you in this case even if you don't have the money to pay for one?"
8. "Do you have the money to hire your own lawyer?" [*If "yes," then go to paragraph 8(c). If "no," then say*] "Would you like me to appoint a lawyer to represent you at no expense to you?" [*If "yes," then ask*] "Has the defendant completed a financial affidavit?" [*and go to paragraph 8(a) or 8(b), as appropriate. If "no," then go to paragraph 8(d).]*

(a) "Has the defendant completed a financial affidavit?" [*If a completed financial affidavit is available, then review the financial affidavit and say one of the following things.*]

(1) [*If a panel attorney or federal defender is present and the defendant qualifies for court-appointed counsel, then say*] "I've reviewed the defendant's financial affidavit, and find that (s)he's entitled to court-appointed counsel. I appoint (*name of attorney*) to represent the defendant)." [*Go to paragraph 9.*]

(2) [*If an attorney is not present and the defendant qualifies for court-appointed counsel, then say*] “I’ve reviewed the defendant’s financial affidavit, and find that (s)he’s entitled to court-appointed counsel. I direct the Clerk of Court to appoint a lawyer to represent the defendant either from the federal defender’s office or from the panel of lawyers qualified to handle this type of case.” [*Go to paragraph 9.*]

(3) [*If the defendant does not qualify for court-appointed counsel, then say*] “I find the defendant is not entitled to court-appointed counsel based on (state reason, such as level of income or available assets).” [*Ask the defendant about his/her plans for retaining an attorney, then, go to paragraph 9.*]

(b) [*If no completed financial affidavit is available, then say one of the following things.*]

(1) [*If a panel attorney or federal defender is present, then say*] “I hereby appoint (name of attorney) to represent the defendant.” [*Then say*] “This appointment is subject to my review of a completed financial affidavit, which is to be submitted to me within the next 48 hours.” [*Tell the defendant*] “You should understand that the information you provide on the affidavit is subject to the penalties of perjury. This means you could be prosecuted for perjury if you give false information on the affidavit.” [*Go to paragraph 9*]

(2) [*If an attorney is not present, then say*] “I hereby direct the Clerk of Court to appoint a lawyer to represent the defendant from the list of lawyers qualified to handle this type of case.” [*Then say*] “This appointment is subject to my review of a completed financial affidavit, which is to be submitted to me within the next 48 hours.” [*Tell the defendant*] “You should understand that the information you provide on the affidavit is subject to the penalties

of perjury. This means you could be prosecuted for perjury if you give false information on the affidavit.” [Go to paragraph 9]

(c) [If the defendant does not want the court to appoint an attorney for her/him **because (s)he has hired or intends to hire an attorney**, then make a record on the subject, and go to paragraph 9.]

(d) [If the defendant does not want the court to appoint an attorney for her/him **because (s)he wants to represent him/herself**, then say] “Although you may have a constitutional right to represent yourself in this case, you will have to convince me that you are competent to do so before I will allow you to proceed without a lawyer. I strongly suggest that you have a lawyer represent you in this case.” [Make a record on the defendant’s competence to represent him/herself, and then go to paragraph 9.]

9. [Ask the prosecutor] “Is there a detainer against the defendant?”

(a) [If “no,” then go to paragraph 10.]

(b) [If “yes,” then say] “Since it appears it would be futile to hold a detention hearing (since the defendant won’t be released from custody in any event), I hereby order the defendant detained without a hearing, although I’ll hold a detention hearing if the defendant’s attorney requests one.” [If an attorney for the defendant is present, ask him/her] “Do you want a detention hearing scheduled at this time?” [If “yes,” go to paragraph 10. If “no,” then go to paragraph 14.]

10. “What’s the government’s position on detention?” [If the government does not ask for detention, then sign the bond and advise the defendant to go over the terms of the bond carefully with his/her attorney, and go to paragraph 14. If the government asks for detention, then go to paragraph 11.]

11. *[If the charge is for a crime of violence or a drug charge, go to paragraph 12 or 13, as appropriate. If the charge is **not for a crime of violence or a drug charge**, then ask] “Does the government believe it is entitled to a detention hearing?” [If “yes,” then ask] “What’s the response of defense counsel to the request for a detention hearing?”*
- (a) *[If the government is **not entitled to a detention hearing**, then sign the bond and advise the defendant to go over the terms of the bond carefully with his/her attorney. Then go to paragraph 14.]*
- (b) *[If the government is **entitled to a detention hearing**, then go to paragraph 12 or 13, as appropriate.]*
12. *[If the government is entitled to a detention hearing **and the defendant waives his/her right to a detention hearing** at this time, then order him/her detained, and go to paragraph 14.]*
13. *[If the government is entitled to a detention hearing, **and the defendant wants a detention hearing**, then schedule a detention hearing in three business days, or earlier if the government will agree to an earlier date, or for a later date if the defendant’s attorney requests more time, and go to paragraph 14.]*
14. *[Tell the defendant] “You have the right to a preliminary examination, at which the prosecution would have to show probable cause that you committed the offense(s) charged in the complaint.” [Schedule the preliminary examination within 10 days if the government is asking for detention or within 20 days if the defendant is to be released on bond. **If there is to be a detention hearing, see if the parties will agree that the preliminary examination can be held at the same time as the detention hearing.** This would conclude the hearing.]*